

## **REMARKS**

### **Election/Restriction Requirement**

The Examiner has withdrawn claim 35 from consideration because claim 35 is directed to a patentably distinct species of the inventions. In order to remove issues for appeal, Applicant has cancelled claim 35. Approval of this amendment is respectfully requested from the Examiner.

### **35 U.S.C. § 102 Claim Rejections**

The Examiner has rejected claims 1-11, 13-14, 16-19 and 36 as being anticipated under 35 U.S.C. § 102(b) by Lentz et al. (U.S. Patent No. 5,843,166). Applicant has carefully considered the Examiner's comments. However, Applicant respectfully submits that the prior art of record does not disclose all of the limitations of Applicant's claims. Moreover, there is no suggestion or motivation to combine the prior art to achieve Applicant's claimed inventions.

Referring to claim 1, the Examiner argues that Lentz et al. discloses a unitary stent structure (28). Specifically, the Examiner argues that "each ring structure (28) of Lentz is in fact a unitary stent structure." (Office Action at pg. 2). The Examiner also argues that Lentz et al. discloses first and second radial openings that are axially and circumferentially defined by a plurality of struts. In particular, the Examiner argues that the "examiner interprets a radial opening as the space between stent members 28. It is clear based on figure 1 that the radial opening is defined radially by the struts of the stent members, however examiner asserts that the struts also define radially the opening. Otherwise, it should be said that the opening extends infinitely, since this is not the case (it is clear from applicants disclosure that the radial openings are confined to the device) examiner asserts that the outer circumference of the struts of two stent members defining a space there between defines the openings circumferentially." (Office Action at pg. 3).

Applicant respectfully disagrees with the Examiner's interpretation of Lentz et al. and the claim language recited in claim 1. Applicant does agree with the Examiner that "each" ring structure (28) in Lentz et al. may be considered to be a unitary stent structure. Thus, as shown in Figure 3 of Lentz et al., the disclosed stent-graft has three

separate unitary stent structures. However, contrary to the Examiner's argument, none of the individual unitary stent structures in Lentz et al. has first and second radial openings extending therethrough. Claim 1 requires that the "unitary stent structure" have a first radial opening and a second radial opening. However, the Examiner admits that the only radial openings in Lentz et al. are "between" separate unitary stent structures (28). Thus, Lentz et al. fails to disclose radial openings extending through a unitary stent structure as required by claim 1.

Furthermore, the spaces between the ring stents (28) in Lentz et al. are not defined both axially and circumferentially as required by claim 1. An example of the claimed radial openings is shown in Figure 1 of Applicant's application. Attached as Appendix A is a copy of Figure 1 with the axial and circumferential directions labeled. The Examiner's argument concerning this limitation is unclear because the Examiner refers to the openings in Lentz et al. as being "defined radially by the struts" but the Examiner does not explain how the radial openings are "axially" and "circumferentially" defined by struts. (Office Action at pg. 3). As shown in Appendix A, the axial direction is along the length, or axis, of the stent. In Lentz et al., the space between the ring stents (28) is defined axially by adjacent ring stents (28). As explained above, this space fails to disclose Applicant's limitation that the openings are defined axially because the openings in Lentz et al. are not defined by the struts of a unitary stent structure as required by claim 1. As further shown in Appendix A, the circumferential direction is around the circumference of the stent. In Lentz et al., the space between the ring stents (28) is not defined or bound anywhere around the circumference of the stent. Indeed, the space in Lentz et al. wraps around the entire circumference of the stent-graft between the ring stents (28). Thus, the space that the Examiner relies upon is undefined and boundless circumferentially. Moreover, the space is not defined circumferentially by the struts of a unitary stent structure as required by the claim. Because Lentz et al. fails to disclose all of the limitations of claim 1, it is respectfully submitted that the Examiner's § 102 rejection should be withdrawn and claim 1 should be allowed.

Turning to claim 36, the Examiner has not even argued that Lentz et al. discloses an unattached margin extending peripherally all around an attached area between inner

and outer graft layers. An example of this embodiment is shown in Figure 1 of Applicant's application, which shows discrete attached areas 22 that are spaced away from all the edges of the radial openings, both forward and rearward in the axial direction and side-to-side in the circumferential direction. As a result, in Figure 1, the graft layers may move axially and circumferentially relative to the stent structure. (¶ [0020]). By contrast, Lentz et al. discloses attached areas that wrap all the way around the circumference of the stent-graft. (Col. 5, lines 41-46). Thus, Lentz et al. does not disclose discrete attached areas with unattached margins extending peripherally all around the attached areas. The Examiner has provided no explanation of how Lentz et al. discloses this limitation. Because Lentz et al. fails to disclose all of the limitations of claim 36, it is respectfully submitted that the Examiner's § 102 rejection should be withdrawn and claim 36 should be allowed.

In addition to the limitations missing from Lentz et al., the prior art of record fails to disclose the additional limitations of dependent claims 2-11, 13-14 and 16-19. Because each of these claims incorporate all of the limitations of allowable claim 1, claims 2-11, 13-14 and 16-19 are also allowable. Therefore, any further arguments that could be made at this time in support of the additional limitations of Applicants' dependent claims would be superfluous and unnecessary. *In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1555 (Fed. Cir. 1983).

### **35 U.S.C. § 103 Claim Rejections**

The Examiner has rejected claims 15 and 24-34 as being unpatentable under 35 U.S.C. § 103(a) over Lentz in view of Buirge et al. (U.S. Patent Pub. No. 2001/0034550). The Examiner has also rejected claim 12 as being unpatentable under 35 U.S.C. § 103(a) over Lentz in view of Lombardi et al. (U.S. Patent No. 6,579,314). The Examiner has also rejected claims 20-23 as being unpatentable under 35 U.S.C. § 103(a) over Lentz in view of Buirge and in further view of Lombardi.

In order to remove issues for appeal, Applicant has cancelled claims 28-34. Approval of this amendment is respectfully requested from the Examiner. Claims 12, 15 and 20-27 depend from claim 1. As argued above, the prior art of record fails to disclose all of the limitations of claim 1. Thus, claim 1 is allowable. The prior art of

record also fails to disclose the additional limitations of dependent claims 12, 15 and 20-27. Because each of these claims incorporate all of the limitations of allowable claim 1, claims 12, 15 and 20-27 are also allowable. Therefore, any further arguments that could be made at this time in support of the additional limitations of Applicants' dependent claims would be superfluous and unnecessary. *In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1555 (Fed. Cir. 1983).

## **Conclusion**

In order to prepare the application for appeal, Applicants have cancelled claims 28-35. Claims 1-27 and 36 remain pending in the application. It is respectfully submitted that none of the prior art of record discloses all of the limitations of Applicant's claims. Furthermore, there is no suggestion or motivation to combine the prior art to achieve Applicant's claimed inventions. Therefore, Applicant's claims are allowable. Accordingly, Applicant requests reconsideration and allowance of the application.

Respectfully submitted,

/Richard E. Stanley, Jr./  
Richard E. Stanley, Jr.  
Registration No. 45,662  
Attorney for Applicants

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, ILLINOIS 60610  
(312) 321-4200